IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.604 OF 2004

M/s.NRC Ltd .. Appellant
V/s
Dy.Commissioner of Income Tax, Mumbai .. Respondents

Mr.S.N.Inamdar for the Appellant.
Mr.A.Kotangale for the Respondents.

CORAM : DR.S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.

DATE : 13th March, 2007.

P.C.:

1. Heard the learned Counsel for the parties. The above appeal pertains to the Assessment Year 1977-1978. The substantial questions of law sought to be raised in this Appeal read as under:-

i. Whether on the facts and in circumstances of case and in law the Appellate Tribunal was right in upholding that there was any concealment in return of income filed by the appellant attracting proviso to section 271(1)(c)?

ii. Whether the tribujal was right in law in holding that once an assessment is made whether a best assessment or otherwise the figure assessed must be held to be income of the assessee for levy of concealment penalty?

iii. Whether the Tribunal was justified in law in sustaining the penalty when there was no tax payable & in holding that the amendment to Explanation 4 to S.271(1)(c) was retrospective being clarificatory.

2. The learned Counsel for both the parties categorically state that the aforesaid questions of law involved in this Appeal are squarely covered by a decision of the Supreme Court in the case of **Virtual**

Soft Systems Ltd V/s.Commissioner of Income Tax - (2007) 289 ITR 83 (SC), in favour of the Assessee and against the Revenue. In view thereof, Appeal is allowed by answering the questions of law in favour of the Assessee and against the Revenue, and the order of the Income Tax Appellate Tribunal stands set aside.

(J.P.DEVADHAR, J.) **(DR.S.RADHAKRISHNAN,J.)**